

State of Maine
Board of Licensure in Medicine
137 SHS 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of August 17, 2012 Emergency Meeting

BOARD MEMBERS PRESENT

Maroulla Gleaton, M.D., Board Secretary
Louisa Barnhart, M.D.
Cheryl Clukey
Dana Dyer
David Nyberg, Ph.D.

BOARD STAFF PRESENT

Randal C. Manning, Executive Director
Maria MacDonald, Board Investigator

ATTORNEY GENERAL'S OFFICE

Dennis Smith, Assistant Attorney General

Dr. Hatfield, Dr. Andrews, Dr. Dumont, and Dr. Jones were unable to attend.

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session, portions of the meeting actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

PUBLIC SESSIONS

8:45 a.m. – 8:50 a.m.

PURPOSE

Call to order

9:00 a.m. – 9:05 a.m.

Public Session and Adjournment

EXECUTIVE SESSION

8:50 a.m. – 9:00 a.m.

AD 12-151

- I. Call to Order – Acting Chairman Dr. Gleaton called the meeting to order at 8:45 a.m.
A. Amendments to Agenda
Amendment to Licensing Section – Pacifico D. Ongkingco, Jr., M. D.

II. Assessment and Direction

A. AD 12-151

Mr. Dyer moved to enter executive session. Dr. Nyberg seconded the motion, which passed unanimously.

On a motion by Ms. Clukey which was seconded by Mr. Dyer and passed unanimously, the Board reconvened in public session.

Mr. Clukey moved to issue a complaint in the matter of AD 12-151. Mr. Dyer seconded the motion, which passed unanimously.

Dr. Nyberg moved to accept an interim consent agreement in the matter of Kevin Kendall, M.D. if signed and returned today by 3:00 p.m. or if not received to issue a summary suspension. Ms. Clukey seconded the motion, which passed unanimously.

[See Appendix A Attached]

III. Secretary's Report

A. Pacifico D. Ongkingco, Jr., M. D.

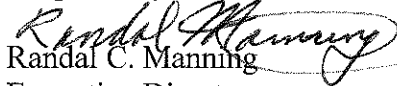
Dr. Ongkingco's license application was denied for not meeting the qualifications for licensure at the July 10, 2012 meeting. The Board intended to grant Dr. Ongkingco leave to withdraw his application but it was unintentionally left off the motion.

Ms. Clukey moved to allow Dr. Ongkingco leave to withdraw his application for permanent license. Mr. Dyer seconded the motion, which passed unanimously.

IV. Adjournment 9:07 a.m.

Ms. Clukey moved to adjourn. Dr. Nyberg seconded the motion, which passed unanimously.

Respectfully submitted,



Randal C. Manning
Executive Director

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
Kevin M. Kendall, M.D.) INTERIM CONSENT AGREEMENT

This document is an Interim Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice medicine in the State of Maine held by Kevin M. Kendall, M.D. The parties to the Consent Agreement are: Kevin M. Kendall, M.D. ("Dr. Kendall"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. The Board first issued Dr. Kendall a license to practice medicine in Maine on August 14, 1997. Dr. Kendall specializes in Emergency Medicine. On September 30, 1998, Dr. Kendall entered into a consent agreement with the Board and the Office of Attorney General regarding his addiction to Stadol, a synthetically derived opioid agonist-antagonist analgesic, and his actions in illegally obtaining and using it. The consent agreement required Dr. Kendall to abstain from the use of all prohibited substances, continuing counseling, and undergo monitoring. On August 27, 1998, Dr. Kendall submitted a urine sample that was positive for Morphine and Codeine, which resulted in the immediate suspension of Dr. Kendall's Maine medical license. Following a hearing on November 10, 1998, the Board reinstated Dr. Kendall's Maine medical license as it determined that it was more likely than not that the

positive urine screen was caused by his ingestion of poppy seed bagels. In addition, the Board increased the frequency of Dr. Kendall's urine testing and prohibited him from consuming foods containing poppy seeds. Dr. Kendall successfully complied with the terms of the consent agreement, and on January 14, 2003, the Board released him from it.

2. On or about April 1, 2011, Dr. Kendall filed an on-line application to renew his Maine medical license. On that application, he disclosed his prior consent agreement with the Board as well as an alcohol dependency that resulted in his entering in-patient treatment in 2010. Dr. Kendall also disclosed that he had entered into the Maine Medical Professionals Health Program for assistance with and monitoring of his sobriety.¹ On May 10, 2011, the Board granted Dr. Kendall's application for the renewal of his Maine medical license.

3. On or about August 6, 2012, the Board received information from the Maine Medical Professionals Health Program (MMPHP) that Dr. Kendall was removed from his Emergency Department shift at Bridgton Hospital due to concerns that Dr. Kendall was not himself and appeared to be impaired. Following an evaluation of his impairment, Dr. Kendall was sent home from the hospital and was arrested for Operating Under the Influence after hitting a mail box. According to the MMPHP, Dr. Kendall was placed on leave from the

¹ The Maine Medical Professionals Health Program also provided the Board with a letter indicating Dr. Kendall's enrollment with and active successful participation in that program.

hospital, was being evaluated, and would not be allowed to return to work until he completed recommended treatment.

4. This Interim Consent Agreement has been negotiated by legal counsel for Dr. Kendall and legal counsel for the Board. Absent acceptance of this Interim Consent Agreement by Dr. Kendall by signing it and dating it in front of a notary and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before August 17, 2012, the Board may take any action permitted by law regarding Dr. Kendall's Maine medical license.

5. By signing this Consent Agreement, Dr. Kendall waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Interim Consent Agreement to the Board for possible ratification. Dr. Kendall waives, in his personal capacity and through legal counsel, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Interim Consent Agreement.

COVENANTS

6. The Board and Dr. Kendall agree that it would be in Dr. Kendall's and the public's best interest for him to temporarily suspend his ability to practice medicine in the State of Maine prior to the Board's ultimate disposition of this new information regarding Dr. Kendall.

7. Dr. Kendall agrees to the temporary suspension of his license to practice medicine in the State of Maine until such time as the Board takes final

action – either by hearing and decision and order or by Consent Agreement – regarding these matters. Dr. Kendall understands and agrees that he will not practice medicine or render any professional health care services to any person in the State of Maine or in any other location under his Maine medical license. In the meantime, Dr. Kendall shall return his Maine medical license to the Board pending the Board's final resolution of these new allegations.

8. Violation of any of the terms or conditions of this Interim Consent Agreement by Dr. Kendall shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license by the Board, including but not limited to possible fines, additional period(s) of suspension, and revocation. Dr. Kendall agrees that the Board has the authority pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5) to suspend or revoke his Maine medical license.

9. Dr. Kendall has been represented by legal counsel, Michael A. Duddy, Esq. with respect to the terms of this Interim Consent Agreement.

10. This Interim Consent Agreement is not appealable, constitutes interim disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until the Board holds an adjudicatory hearing and/or fully and finally resolves this matter with a final Consent Agreement or by other lawful means.

11. This Interim Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

12. Nothing in this Interim Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

I, KEVIN M. KENDALL, M.D., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN THIS INTERIM CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS INTERIM CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 8/17/12 Kevin M. Kendall
KEVIN M. KENDALL, M.D.

STATE OF Maine
Cumberland, S.S.

Personally appeared before me the above-named Kevin M. Kendall, M.D., and swore to the truth of the foregoing based upon ^{his} own personal knowledge, or upon information and belief, and so far as upon information and belief, ~~she~~ believes it to be true.

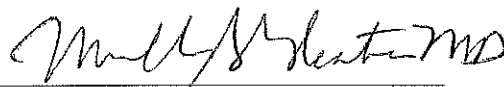
DATED: 8/17/2012 Kelly Anne Jarvis
NOTARY PUBLIC
KELLY ANNE JARVIS
Notary Public, Maine
My Commission Expires March 9, 2014

DATED: 8-17-2012 Michael A. Duddy
MICHAEL A. DUDDY, ESQ.
Attorney for Dr. Kendall

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

8/22/12



MAROULLA S. GLEATON, M.D., Acting
Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

8/22/12



DENNIS E. SMITH
Assistant Attorney General

APPROVED

EFFECTIVE: 8/22/12